C. REMARKS

This Reply is in response to the Office Action mailed on June 16, 2004 in which claims 58-63, 69-73 and 108-135 were rejected. With this Reply, claims 58 and 69 are amended, and claims 114-117 and 122-135 are canceled without prejudice. Claims 58-63, 69-73, 108-113 and 118-121 are presented by the Applicants for reconsideration and allowance.

1. REJECTION OF CLAIMS 58-61, 108-111, 118, 122-125 AND 132 UNDER 35 U.S.C. § 103(a) AS BEING UNPATENTABLE OVER FILICE IN VIEW OF CHEN

Page 2 of the Office Action rejected claims 58-61, 108-111, 118, 122-125 and 132 under 35 U.S.C. § 103(a) as being unpatentable over Filice (U.S. Patent No. 5,592,158) in view of Chen (U.S. Patent No. 6,485,382). Claims 58 and 108 are independent claims, and claims 59-61 and claims 109-111 depend from independent claims 58 and 108, respectively. Independent claim 58 is currently amended to more clearly set forth the invention and is now believed to be patentably distinguishable over the cited prior art. Claims 118, 122-125 and 132 are cancelled without prejudice.

Independent claim 58, as amended, recites a method for constructing an elongate bat having a longitudinal axis. The method includes forming an elongate one-piece tubular striking member having a circular cross section with a proximal end, a distal end, a striking region therebetween, and a juncture section adjacent the proximal end converging toward the axis on progressing toward the proximal end to form a mouth of a first diameter. The method also includes forming an elongate one-piece handle member of composite material having a circular cross section having a proximal end, a distal end and a juncture section adjacent the distal end which diverges from the axis on progressing toward the distal end to a second diameter greater than the first diameter. The method also includes assembling the striking member and handle member by inserting the handle member into the striking member with at least a portion of the outer surface of the juncture section of the handle member engaging a portion of the inner surface of the juncture section of the striking member, with the remaining

portions of the handle member extending longitudinally from the proximal end of the striking member. The method further includes joining the juncture section of the handle member to the juncture section of the striking member to provide a rigid interconnection between the striking member and the handle member.

It is respectfully submitted that neither Filice nor Chen, alone or in combination, teach, suggest or disclose the combination of elements and limitations of independent claim 58, as amended, or independent claim 108. In particular, neither Filice nor Chen, alone or incombination, teach a method of constructing a bat including the steps of: forming an elongate one-piece tubular striking member having a juncture section; forming an elongate one-piece handle member having its own juncture section; assembling the striking and handle members such that at least a portion of the juncture section of the handle member engages a portion of the juncture section of the striking member; and rigidly interconnecting the handle member to the striking member.

In contrast, Filice discloses a shock attenuating ball bat having a handle and a barrel, which is configured to reduce the shock or sting transferred to a user's hands upon impact with a ball. Filice seeks to accomplish this shock attenuation though the use of an elastomeric isolation union, which is specifically placed between the handle and the barrel to prevent contact between the handle and the barrel and to isolate the handle from the barrel. Preferably, the elastomeric isolation union is approximately 0.125 inch thick. The elastomeric isolation union prevents complete striking energy transfer from the handle to the barrel and vice versa. Filice is directed toward and specifically teaches no contact or engagement between the handle and barrel. Thus, Filice teaches away from the direct contact, engagement and rigid interconnection of the handle member and the striking member.

In further contrast to the requirements of claims 58 and 108, Chen discloses a bat having a composite portion, a ring and a far portion. The composite portion includes a distal end having an interlocking joining means, which mechanically interlocks with the ring.

In the first embodiment, the interlocking joining means is through bores on the distal end of the composite portion. In the second embodiment, the interlocking joining means includes a plurality of annular contours for receiving the ring. Adhesion of the resin to surfaces of the ring mechanically joins the composite portion to the ring. The ring is a tapered, truncated conical shell, which is made of a metal, such as aluminum alloy. The distal portion of the ring is adapted for attachment to the far portion, such as through welding, pinning, etc. The bat of Chen does not include a one-piece handle member and a one-piece striking member wherein at least a portion of a one-piece handle directly engages or contacts at least a portion of a striking member. Rather, Chen discloses the introduction of an additional structure, the ring, formed of a metal, which is mechanically interlocked with the composite portion and the far portion. The ring serves as either a second piece of the handle member, or it serves as a separate component of the bat, which separates and isolates the handle member from the striking member and prevents direct contact, and substantially complete striking energy transfer between, the handle and striking members.

The methods of claim 58, as amended, and claim 108 are directed toward the construction of a ball bat that maximizes performance and power transfer. The direct connection between the handle member and the striking member specified in the methods of constructing a ball bat in claims 58 and 108 results in a method of constructing a bat wherein the bat provides the user with substantially complete energy transfer to the batted ball. Further, the direct connection of at least a portion of the handle and striking members, resulting from this method, enables the user to receive a more desirable and direct feel of the bat with the batted ball. This direct connection and substantially complete striking energy transfer contributes to the improved performance and feel of a bat made in accordance with the methods of claims 58 and 108.

Filice and Chen each fail to provide a method of constructing a bat with the direct connection and direct feel desired in a high performance bat. Through the insertion of the elastomeric isolation union of Filice and the ring of Chen, the addition of a connection

between the elastomeric isolation union to the handle and the ring to the composite member, and the addition of another connection between the elastomeric isolation union and the barrel, and the ring and the far portion, the bats of Filice and Chen, alone or in combination, necessarily and undesirably increases the cost and complexity of the bat, and prevent direct contact, and prevents substantially complete striking energy transfer, between the handle and striking members.

Neither Filice nor Chen teach, disclose or suggest the methods of claim 58, as amended, or claim 108, as amended. Accordingly, it is respectfully submitted that amended claim 58 and claim 108 each overcome the rejection based upon Filice in view of Chen, and are believed to be in condition for allowance. It is also respectfully submitted that claims 59-61 and 109-111, which depend from amended claim 58 and claim 108, respectively, are patentable over Filice and/or Chen for at least the same reasons.

2. *REJECTION OF CLAIMS 62, 63, 69-73, 112,113, 126 AND 127 UNDER 35 U.S.C. § 103(a) AS BEING UNPATENTABLE OVER FILICE IN VIEW OF CHEN AND FEENEY '655*

Page 2 of the Office Action rejected claims 62, 63, 69-73, 112,113, 126 and 127 under 35 U.S.C. § 103(a) as being unpatentable over Filice in view of Chen and Feeney '655 (U.S. Pat. No. 6,056,655). Claims 62 and 63 are dependent claims, which depend from independent claim 58, as amended. Claim 69 is an independent claim and claims 70-73 depend from claim 69. Independent claims 58 and 69 are currently amended to more clearly set forth the invention and are now believed to be patentably distinguishable over the cited prior art, including Filice, Chen and Feeney '655. Claims 112 and 113 are dependent claims, which depend from independent claim 108. Claims 126 and 127 are canceled without prejudice.

Independent claim 69, as amended, recites a method for constructing an elongate bat having a longitudinal axis. The method includes forming an elongate one-piece tubular striking member having a circular cross section with a proximal end, a distal end, a striking region therebetween, and a first juncture section adjacent the proximal end. The first juncture

section converting toward the axis on progressing toward the proximal end of the striking member. The method also includes forming an elongate one-piece handle member of composite material having a circular cross section having a proximal end, a distal end and a second juncture section adjacent the distal end. The second juncture section diverging from the axis on progressing toward the distal end of the handle member. The step of forming the handle member includes positioning plural composite layers adjacent each other to form a tubular member and curing the layers.. The method also includes assembling the striking member and handle member with at least a portion of the outer surface of the juncture section of the handle member engaging a portion of the inner surface of the juncture section of the striking member, and joining the juncture section of the handle member to the juncture section of the striking member to provide a rigid interconnection therebetween.

It is respectfully submitted that Filice, Chen and Feeney '655, alone or in combination, do not teach, suggest or disclose the combination of elements and limitations of independent claim 69, as amended. In particular, Filice, Chen and Feeney '655, alone or in combination, do not teach a method of constructing a bat including the steps of: forming an elongate one-piece tubular striking member having a juncture section; forming an elongate one-piece handle member having its own juncture section; assembling the striking and handle members such that at least a portion of the juncture section of the handle member engages a portion of the juncture section of the striking member; and rigidly interconnecting the handle member to the striking member.

In contrast to the requirements of claims 58, 69 and 108, Feeney '655 teaches a composite bat having a frame with an integral handle area and hitting area, wherein an annular recess is formed into a portion of the hitting area for receiving an annular insert. Feeney '655 does not teach, suggest or disclose a method of constructing a ball bat with separate one-piece handle and striking members wherein the one-piece striking member has a proximal end that converges toward a longitudinal axis of the bat toward the proximal end of the striking member. Accordingly, it is respectfully submitted that claims 62, 63, claims 70-73, and

claims 112 and 113, which depend from independent claims 58, 69 and 108, respectively, are patentable over Filice in view of Chen and Feeney'655 for at least the reasons stated above relating to independent claims 58, 69 and 108.

3. *REJECTION OF CLAIMS 119, 120, 133 AND 134 UNDER 35 U.S.C. § 103(a) AS BEING UNPATENTABLE OVER FILICE IN VIEW OF CHEN AND LANCTOT*

Page 3 of the Office Action rejected claims 119, 120, 133 and 134 under 35 U.S.C. § 103(a) as being unpatentable over Filice in view of Chen and Lanctot (U.S. Patent No. 5,380,003). Claims 119 and 120 are dependent claims, which depend from independent claim 108. Claims 133 and 134 are canceled without prejudice.

It is respectfully submitted that Filice, Chen and Lanctot, either alone or in combination, do not teach, suggest or disclose the combination of elements and limitations of independent claim 108. Lanctot discloses a baseball bat having a one-piece integral frame with a handle configured to receive a tubular insert. Lanctot does not teach, suggest or disclose a method of constructing a bat with a one-piece handle member and a separate one-piece striking member, and rigidly connecting the handle and striking members such that at least a portion of the handle and striking members contact each other.

Accordingly, it is respectfully submitted that claims 119 and 120, which depend from independent claim 108, are patentable over Filice in view of Chen and Lanctot for at least the reasons stated above relating to independent claim 108

4. *REJECTION OF CLAIMS 121 AND 135 UNDER 35 U.S.C. § 103(a) AS BEING UNPATENTABLE OVER FILICE IN VIEW OF CHEN AND EGGIMAN '398*

Page 3 of the Office Action rejected claims 121 and 135 under 35 U.S.C. § 103(a) as being unpatentable over Filice in view of Chen and Eggiman '398. With this Reply, claims 121 and 135 are canceled without prejudice.

5. *REJECTION OF CLAIMS 114-117 AND 128-131 UNDER THE JUDICIALLY CREATED DOCTRINE OF OBVIOUSNESS-TYPE DOUBLE PATENTING*

Page 4 of the Office Action rejected claims 114-117 and 128-131 under the judically created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of U.S. Patent No. 6,702,698. With this Reply, claims 114-117 and 128-131 are canceled without prejudice.

6. CONCLUSION

Applicants respectfully request reconsideration of claims 58-63, 69-73, 108-113 and 118-121 for the reasons stated above. Applicants believe that the present application is now in condition for allowance. Favorable reconsideration under 37 C.F.R. § 1.112 is respectfully requested. The Examiner is invited to telephone the undersigned to discuss any issues in this case in order to advance the prosecution thereof.

Respectfully submitted,

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By _____

Terence P. O'Brien
Attorney for Applicants
Registration No. 43,840

Wilson Sporting Goods Co.
8700 W. Bryn Mawr Avenue
Chicago, IL 60631

Telephone: (773) 714-6498
Facsimile: (773) 714-4557